In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 677

ELFRIEDE BERTA POPROWSKI, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner, a native and citizen of Germany, was admitted to the United States on or about November 12, 1964, as a nonimmigrant visitor, and was authorized to remain in the United States until March 15, 1966. When she remained beyond that date, the Immigration and Naturalization Service instituted a deportation proceeding. Petitioner conceded (and concedes here (Pet. 4)) that she is deportable but applied for an adjustment of status under the provisions of Section 245

of the Immigration and Nationality Act, 8 U.S.C. 1255.

Both the special inquiry officer and the Board of Immigration Appeals found petitioner to be ineligible for adjustment of status because (1) she did not have the labor certification which is required by Section 212(a)(14) of the Act, 8 U.S.C. 1182(a)(14); and (2) she was ineligible for admission to the United States under Section 212(a)(9), 8 U.S.C. 1182(a)(9), because of her criminal record. (Pet. App. 1-15).

On petition for review, the Court of Appeals for the Fifth Circuit, finding no basis for interference with the deportation order, dismissed the petition *per curiam* (Pet. App. 16-18). A petition for rehearing was denied on June 26, 1968. (Pet. App. 19). On September 30, 1968, Mr. Justice Black extended the time for filing a petition for a writ of certiorari to and including October 21, 1968. (Pet. App. 22). The petition, however, was not filed until October 22, 1968. It is thus out of time under 28 U.S.C. 2101(c) and Rule 22(3) of this Court, and cannot invoke the Court's certiorari jurisdiction. See, also, Stern and Gressman, *Supreme Court Practice* (3d Ed.), Sec. 6-1; Memorandum in Opposition (pp. 8-9) in *Morales et al.* v. *Immigration and Naturalization Service*, Nos. 77 Misc. and 78 Misc., this Term, certiorari denied, October 14, 1968.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied or dismissed.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1968.

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